



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2004

Lt. Carol Taylor
Records Manager
Taylor County Sheriff's Department
450 Pecan Street
Abilene, Texas 79062-1692

OR2004-4908

Dear Lt. Taylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203492.

The Taylor County Sheriff's Department (the "department") received a request for all documentation pertaining to a named former employee. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we address your assertion that portions of the request are vague and overbroad.¹ Section 552.222 of the Government Code permits a governmental body to ask the requestor to clarify or narrow the scope of the request. Section 552.222(b) provides:

If what information is requested is unclear to the governmental body, the governmental body may ask the requestor to clarify the request. If a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed, but the governmental body may not inquire into the purpose for which information will be used.

¹ You state that there is no documentation regarding one of the specific requests for information, other than a radio recording, which the requestor specifies is not sought.

However, a request for records made pursuant to the Public Information Act may not be disregarded simply because a citizen does not specify the exact documents the citizen desires. Open Records Decision No. 87 (1975). Numerous opinions of this office have addressed situations in which a governmental body has received an "overbroad" written request for information. For example, Open Records Decision No. 561 at 8-9 (1990) states:

We have stated that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975). It is nevertheless proper for a governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982); 23 (1974). For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated that the governmental body may advise the requestor of the types of information available so that he may properly narrow his request. Open Records Decision No. 31 (1974).

In response to the request at issue here, the department must make a good-faith effort to relate the request to information in the department's possession and must help the requestor to clarify his request by advising him of the types of information available. We note that if a request for information is unclear, a governmental body may ask the requestor to clarify the request. Gov't Code § 552.222(b); *see also* Open Records Decision No. 561 at 8 (1990). In this instance, you do not give any indication that the department contacted the requestor about clarifying or narrowing his request under section 552.301. Our ruling is therefore limited to only those documents that were actually submitted, and does not authorize the withholding of any other requested documents. However, we will consider whether section 552.103 excepts any of the submitted documents from disclosure.

In relevant part, section 552.103 provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The department must meet both prongs of this test for information to be excepted under 552.103(a).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). This office has stated that a pending EEOC complaint indicates that litigation is reasonably anticipated. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982). Generally, upon dismissal of a complaint, the EEOC simultaneously issues a Notice of Right to Sue letter, indicating that the complainant has the right to sue on the claim for ninety days following the date of receipt of the notice.

In this instance, you state that the requestor filed a discrimination complaint with the EEOC, which was subsequently dismissed. You further state that, since that time, the requestor allegedly made a statement in the presence of the sheriff that he intends to speak with his attorney about a civil lawsuit. You concede, however, that no suit had been filed at the time of the request. This office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). *See also* Open Records Decision No. 361 (1983) (the fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated). Therefore, based upon the information provided, the department has failed to demonstrate that it anticipated litigation on the date it received the request. Furthermore, even if this office found that litigation was reasonably anticipated, the fact that the requestor in this instance is a cousin of the individual to whom the requested documents pertain is not sufficient to establish that the records are related to a potential discrimination lawsuit. Accordingly, the department may not withhold the submitted records under section 552.103.

However, the submitted documents contain information that may be excepted under section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address, home telephone number, and social security number of a current or former

employee of a governmental body, as well as information that reveals whether the employee has family members, if the current or former employee timely requested that this information be kept confidential under section 552.024.² See Open Records Decision Nos. 622 (1994), 455 (1987). This information may not be withheld, however, in the case of a current or former employee who made the request for confidentiality under section 552.024 after the request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). We are unable to ascertain whether the address we have marked is the former employee's current or former residential address. Therefore, if the marked information is a home address of the former employee at issue, and if the employee made a timely election under section 552.024, you must withhold this information under section 552.117. If the marked address is not a home address, or if the former employee did not timely elect to keep this information confidential, you must release this information to the requestor. You must release all remaining information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free,

² The former home addresses and telephone information of an employee of a governmental body who timely requests confidentiality under section 552.024 are also excepted from disclosure under section 552.117. See Open Records Decision No. 622 (1994).

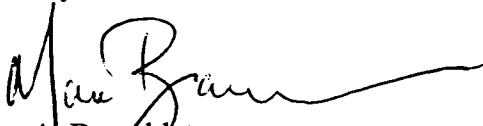
at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/jh

Ref: ID# 203492

Enc. Submitted documents

c: Mr. Alfredo Solis
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Abilene, Texas 79601
(w/o enclosures)